

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEE KNOWLIN,

Plaintiff,

ORDER

v.

08-cv-745-bbc

RICHARD RAEMISCH, Department of
Corrections Secretary; BRAD HOMPE,
Warden of Stanley Correctional Institution;
R. RICHARDSON, Security Director of
Stanley Correctional Institution;
JAMES TOTKA, Captain of Flambeau
Correctional Center; and MARK HEISE,
Director of Offender Movement and
Classification;

Defendants.

Plaintiff Lee Knowlin has filed a motion to “strike” the affidavits of Reed Richardson and Matthew Gerber that defendants filed in opposition to plaintiff’s motion for a preliminary injunction. Dkt. #27. Plaintiff’s motion will be denied.

Plaintiff argues that the averments in the affidavits are irrelevant or false, but this is not a ground for “striking” them. The Court of Appeals for the Seventh Circuit has stated repeatedly that motions to “strike” are not the appropriate vehicle for challenging another

party's submissions. E.g., Wiesmueller v. Kosobucki, 547 F.3d 740, 741 (7th Cir. 2008); Custom Vehicles, Inc. v. Forest River, Inc., 464 F.3d 725 (7th Cir. 2006). "If [a party] believe[s] . . . the averments in affidavit[s] [a]re inadmissible, the proper response [i]s not to move to strike the affidavits themselves, but to dispute each of the facts proposed by [the other party] that relied on those affidavits, on the ground that the proposed facts [a]re not supported by admissible evidence." Stocker v. Kalahari Development, LLC, 2007 WL 1140246, *1 (W.D. Wis. 2007).

Plaintiff's motion is scheduled for an evidentiary hearing on March 31. If plaintiff believes that any evidence defendants seek to admit at the hearing is irrelevant, he may make that objection at the time. If he believes any evidence is false, he is free to put forth his own version of the fact and explain in his closing argument why he believes defendants are not credible.

ORDER

IT IS ORDERED that plaintiff Lee Knowlin's motion to strike, dk. #27, is DENIED.

Entered this 26th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge